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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,496	08/05/2003	Ben Hsu	BHT-3125-156	5199

7590 12/22/2004

TROXELL LAW OFFICE PLLC  
SUITE 1404  
5205 LEESBURG PIKE  
FALLS CHURCH, VA 22041

EXAMINER

BRITTAINE, JAMES R

ART UNIT	PAPER NUMBER
	3677

DATE MAILED: 12/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/633,496	HSU, BEN
	Examiner James R. Brittain	Art Unit 3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 20 September 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 6-12 is/are pending in the application.
- 4a) Of the above claim(s) 10-12 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 6-9 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 09 June 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### *Election/Restrictions*

Applicant's election without traverse of Species I comprising figure 3 in the reply filed on September 20, 2004 is acknowledged.

Claims 10-12 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on September 20, 2004.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olson (US D284024) in view of Wear et al. (US 4899974).

Olson (figures 1-3, 8) teaches a side hook for a shower curtain, mainly made up of a fixing clip having a base and an arc flexible plate disposed at the other side thereof in clamping abutment with the base thereof wherein a clamping passage is defined at the bottom ends of the base and the arc flexible plate there-between for both lateral sides of a shower curtain to be pushed there-through for clamping location at the fixing clip therein.

Flexible plate

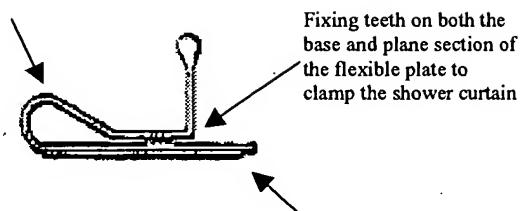


Fig. 3.

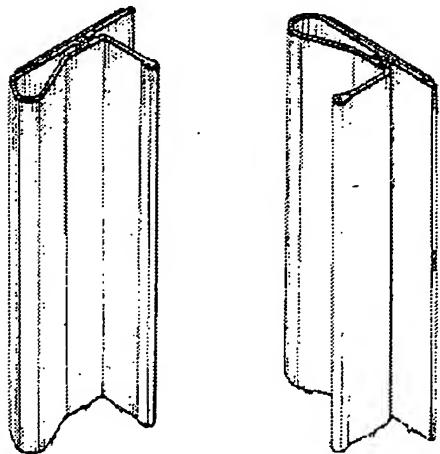


Fig. 1.

Fig. 2.

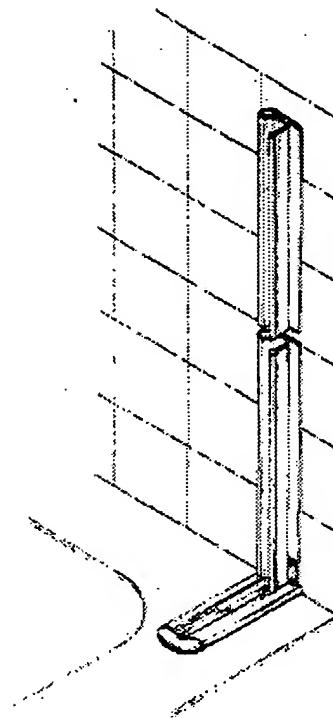
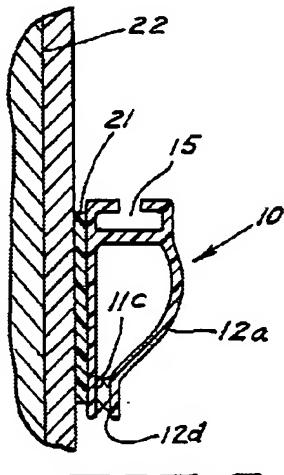


Fig. 4.

One having ordinary skill in the art would recognize that Olson suggests an adhesive layer on the base to secure it to the shower stall wall. The differences are that it is not stated that the flexible plate is resiliently pressing against a first surface of the base and the connector portion is curved rather than flat and perpendicular to the base. However, Wear (figure 4) teaches clip structure for sheet material including a base 11, a flexible plate 12 having a first surface resiliently pressing against a first surface of the base (col. 1, line 65 - col. 2, line 4; reproduced below), a flat connector portion connecting a first end of the base and a first end of

the flexible plate, the flat connector portion extending perpendicularly from the first surface of the base, and a clamping passage located between a second end of the base and a second end of the flexible plate. A self-adhesive interface 21 mounts the clip to a support surface.



Said front wall from the point of engagement therewith of said horizontal wall 14 is shown having a bulging outward downward and inward curvature as at 12b terminating in a bottom vertical flange portion or strip

12c which is parallel with an opposing lower edge portion 11a and the same have a natural normally resilient and yielding gripping engagement. The curvature of said front wall enhances its gripping action.

5 Said bottom edge portions 11b and 12c, which may be

As it would be beneficial to enhance the gripping action of the shower curtain clip of Olson, it would have been obvious to modify the shower curtain clip of Olson such that the flexible plate is resiliently pressing against a first surface of the base and the connector portion is flat and perpendicular to the base in view of Wear et al. teaching such structure as being advantageous in securing sheet material. As to claim 6, Wear et al. suggests the use of a curved flexible plate as enhancing the gripping action and this renders obvious the modification of the shower curtain clip of Olson to have such subject matter. In regard to claim 7, applicant specifically states in the response to the election requirement received September 20, 2004 that "Applicant submits that claims 6, 7 and 9 are also generic to both species" (page 2, ¶2, lines 3-4). Based on this statement, claim 7 covers applicant's figure 6 which is described in the specification on page 5, ¶2 as reproduced below:

Please refer to Fig. 6. The fixing clip 40 can also have a flexible plate 42' with an arc slope and a plane section 421' extending at one side thereof. A clamping passage 43' is disposed at the bottom space defined by the base 41 and the plane section 421' thereof, and fixing teeth 422' are protruding at the inner side of the plane section 421' thereof correspondingly matched to the base 41 in clamping abutment.

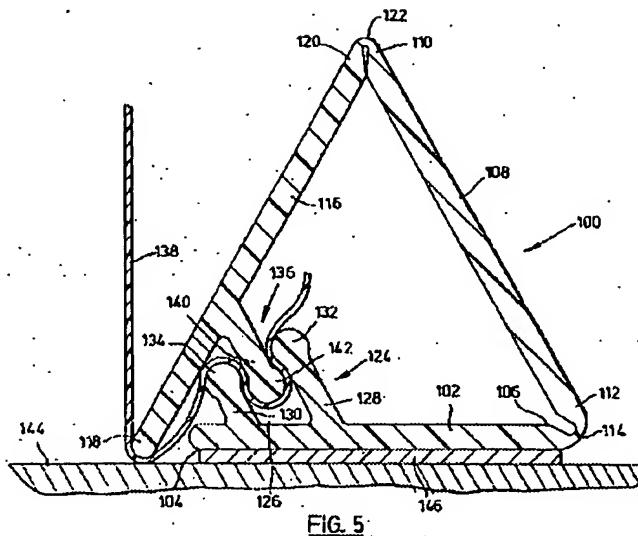
The claim construction for claim 7 is therefor explicitly stated by applicant as admitting placing the teeth so that they protrude from the inner side of a plane section that extends from a curved flexible plate and applicant's claim is accorded the full interpretation in accordance with applicant's statement as it is considered to be an accurate representation of the scope of claim 7. Wear et al. clearly suggests placing the teeth on a plane section that extends from a curved plate so as to enhance the gripping effect and therefor renders obvious the modification of the shower curtain clip of Olson.

In regard to claim 8, Olson suggests having meshing teeth on both gripping surfaces of the shower curtain clip.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Olson (US D284024) in view of Wear et al. (US 4899974) as applied to claim 6 above, and further in view of Cairns (US 4887324).

Further modification of the shower curtain clip of Olson such that a double-sided adhesive tape is used on the base to secure it to the shower stall would have been obvious in view of one having ordinary skill in the art would recognize that Olson suggests an adhesive layer on the base to secure it to the shower stall wall and Cairns (figure 5) teaching fixing clip

structure 100 for a shower curtain 138 wherein it is advantageous to utilize double-sided adhesive tape 146 for ease of assembly.



## *Response to Arguments*

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

## *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents of Heil (US D191787, figure 2), Adams (US 6352229, figures 1-3), Beloff (US D447048, figure 2) and Kuru (D259393, figure 1) teach pertinent clip structure.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is (703) 308-2222. The examiner can normally be reached on M-F 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (703) 306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



James R. Brittain  
Primary Examiner  
Art Unit 3677